Ministries' Handling of *EBR* Applications: A Ten-Year Statistical Retrospective (2000-2010)

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Table of Contents

1.0 Executive Summary 2
2.0 The ECO's Mandate and the Purpose of this Report 3
3.0 Overview of the Application Process 3
4.0 Methodology 4
5.0 Number of Applications Received By Each Ministry 5
6.0 Concerns Raised and Legislation Cited by Applicants 6
6.1 Concerns Raised in Applications for Review 6
6.2 Legislation Cited in Applications for Investigation 6
7.0 Ministries' Handling of Applications for Review 7
7.1 Ministries' Decisions on Applications for Review 7
7.2 Ministries' Reasons for Denying Applications for Review 8
7.3 Ministries' Compliance with *EBR* Deadlines for Applications for Review 9
8.0 Ministries' Handling of Applications for Investigation 10
8.1 Ministries' Decisions on Applications for Investigation 10
8.2 Ministries' Reasons for Denying Applications for Investigation 10
8.3 Ministries' Compliance with *EBR* Deadlines for Applications for Investigation 11
9.0 The ECO's Review of How Ministries Handled Applications 12
9.1 The ECO's Assessment of Ministries' Decisions to Deny Applications for Review 12
9.2 The ECO's Assessment of Ministries' Decisions to Deny Applications for Investigation 13
9.3 The ECO's Concerns with Ministries' Decisions 13
10.0 The Utility of *EBR* Applications in Effecting Change 14
10.1 Ministry Action on Issues Raised in Applications for Review 15
10.2 Ministry Site Visits Relating to Issues Raised in Applications for Investigation 15
10.3 Ministry Action on Issues Raised in Applications for Investigation 16
11.0 Conclusions 17

1.0 Executive Summary

For over 18 years, applications for review and investigation under the *Environmental Bill of Rights, 1993* (*EBR*) have been useful tools for maintaining and improving environmental policy in Ontario, and for including the public in environmentally significant decision making (see Section 3.0 of this report). The purpose of this report is to provide a statistical overview of: the subjects of *EBR* applications; ministries' handling of applications; and the frequency with which applications are followed by government action on the issues raised (Section 2.0).

This report focuses on a ten-year survey period (April 1, 2000 – March 31, 2010). During this time, Ontarians submitted 312 applications, with the vast majority (87 per cent) submitted to the Ministry of the Environment or the Ministry of Natural Resources (Section 5.0). The concerns raised most frequently by applications for review related to water quality, land use planning and fish and wildlife management (Section 6.1). Applications for investigation most commonly alleged contraventions of the *Environmental Protection Act*, the *Ontario Water Resources Act*, and the *Environmental Assessment Act* (Section 6.2).

Ministries turned down 79 per cent of the applications for review received during the study period (Section 7.1). For more than half of these denied applications, ministries cited section 68(1) of the *EBR* and turned down the application on the basis that the decision was made within the previous five years (Section 7.2). Similarly, ministries denied 74 per cent of received applications for investigation (Section 8.1), usually because the responding ministry believed an *EBR* investigation would duplicate an ongoing or completed investigation, or the alleged contravenor had already been brought into, or was already in, compliance (Section 8.2).

Frequently, the Environmental Commissioner of Ontario (ECO) agreed or partially agreed with ministries' decisions to deny applications for review and investigations (84 per cent of applications for review and 94 per cent of applications for investigation). Nevertheless, the ECO often had concerns with how ministries handled applications; for about 30 per cent of applications undertaken or denied during the survey period, the ECO felt that ministries failed to respond to all of the issues raised, and for about 26 per cent, ministries failed to provide sufficient detail to explain their decisions (Section 9.3). Moreover, while ministries were generally diligent at notifying applicants that their application had been received, they often failed to meet the *EBR* timelines to inform applicants whether the application was undertaken or denied (Sections 7.3 and 8.3).

Applications undertaken by ministries were often followed by some government action on the issues raised, such as amendments to regulations or the issuing of Provincial Officer's Orders (79 per cent of applications for review and 75 per cent of applications for investigation; Sections 10.1 and 10.3). Moreover, even some denied applications (approximately one-third) were followed by ministry action on matters highlighted in applications. For 76 per cent of undertaken and 42 per cent of denied applications for investigation, ministries actually visited the site of the alleged contravention(s), either as a result of the application or as part of a previous or ongoing ministry investigation (Section 10.2).

2.0 The ECO's Mandate and the Purpose of this Report

Under sections 57 and 58 of the *Environmental Bill of Rights, 1993* (*EBR*), the Environmental Commissioner of Ontario (ECO) is required to review and report on the receipt, handling and disposition of applications for review and investigation. The ECO meets this obligation by reporting in our annual reports and supplements on ministries' handling of applications and compliance with *EBR* timelines and requirements. The ECO's annual reports and supplements are available at www.eco.on.ca.

The purpose of this technical report is to provide a statistical overview of ministries' handling of applications over a ten-year period (April 1, 2000 – March 31, 2010), including: the number of applications received, denied, undertaken and returned by each ministry; the reasons cited by ministries for denying applications; and ministries' compliance with *EBR* timelines.

This report also statistically summarizes: the nature of the concerns raised in applications; the legislation alleged by applicants to have been contravened; and the ECO's assessment of how ministries handled applications over the period, including the number of applications for which the ECO agreed with the ministry's decision, and the primary concerns the ECO had with ministries' application handling.

Finally, the report considers the usefulness of applications in improving environmental policy, by identifying the number of undertaken applications that were followed by government action (e.g., amendments to legislation, Director's Orders). In particular, the number of applications for investigation for which a ministry actually visited the site of alleged contravention(s) was counted to give an indicator of the attention ministries paid to applicants' concerns. Although site visits can be prompted by a number of things, and they are not relevant in all cases, they can demonstrate how serious ministries are in considering and following-up on contraventions alleged in applications.

By examining and analyzing ministries' handling of applications with a decade-long perspective, the ECO is able to identify and draw attention to trends and concerns, and more fully satisfy the ECO's duty to report to the Legislature on this subject.

3.0 Overview of the Application Process

If an Ontario resident believes that the environment is not being sufficiently protected, the *EBR* gives him or her the right to ask prescribed government ministries to review: an existing policy, law, regulation or instrument (e.g., approval or permit); or the need for a new law, regulation or policy. Such requests are called "applications for review." Ontario residents can also ask ministries to investigate if they believe that specific environmental laws, regulations or instruments have been contravened. These are called "applications for investigation."

Ontarians submit their applications for review or investigation to the ECO, where they are processed to ensure they meet *EBR* requirements; the ECO then forwards applications to the appropriate ministry or ministries. Before making a decision to undertake or deny an application, ministries are required to

conduct a preliminary consideration of an application using criteria outlined in the *EBR*. If an application is denied, the ministry must explain the reasons for its decision, or if undertaken, explain the results of its review or investigation in a letter to the applicants and the ECO. The *EBR* establishes non-discretionary deadlines, decision criteria and notification requirements to be adhered to by ministries when handling applications.

As of March 2012, the following ministries are prescribed under the *EBR* for applications for review:

- The Ministry of Agriculture, Food and Rural Affairs (OMAFRA);
- The Ministry of Consumer Services (MCS);
- The Ministry of Energy (ENG)[1];
- The Ministry of the Environment (MOE);
- The Ministry of Health and Long-Term Care (MOHLTC);
- The Ministry of Municipal Affairs and Housing (MMAH);
- The Ministry of Natural Resources (MNR);
- The Ministry of Northern Development and Mines (MNDM)[2]; and
- The Ministry of Transportation (MTO).

[1] In August 2010, the Ministry of Energy and Infrastructure (MEI), which was previously prescribed for reviews under the *EBR*, split into two ministries: the Ministry of Energy (ENG) and the Ministry of Infrastructure (MOI). A regulation proposal (#011-2697) was posted on the Environmental Registry in March 2011 proposing to change the name of MEI to ENG to ensure that ENG is prescribed for the purposes of responding to applications for review.

[2] In October 2011, responsibility for forestry was transferred from the Ministry of Northern Development, Mines and Forestry (MNDMF) to MNR, and MNDMF was renamed the Ministry of Northern Development and Mines (MNDM).

As of March 2012, applications for investigation may be filed for alleged contraventions of 18 different *EBR*-prescribed laws administered by four ministries (MOE, MNR, ENG, MNDM) and one administrative authority (the Technical Standards and Safety Authority [TSSA] of the Ministry of Consumer Services) or of any regulations under those laws. Applications for investigation may also be filed for alleged contraventions of prescribed instruments issued under 17 laws administered by four ministries (MOE, MNR, MMAH, MNDM) and the TSSA.

4.0 Methodology

The statistics calculated in this report relate to applications received by the ECO between April 1, 2000 and March 31, 2010. For the purposes of this statistical analysis, the ECO counted an application forwarded to multiple ministries as several applications (e.g., an application for review forwarded to four ministries was counted as four separate applications). Also, two energy-related applications that were received by the former Ministry of Energy and Infrastructure and the former Ministry of Energy, Science and Technology were counted as received by the ministry now responsible for energy-related matters: the Ministry of Energy (ENG). Likewise, an application received by the Ministry of Consumer and Business Services in 2002 was counted as received by the Ministry of Consumer Services (MCS).

Terms Related to the Application Process

- A **received** application is an application that has been forwarded by the ECO to and received by a provincial ministry.
- **Preliminary consideration** refers to the process in which a ministry reviews an application using criteria outlined in the *EBR* to determine whether to undertake or deny the application.
- An **undertaken** application is an application for which a prescribed ministry has decided, after preliminary consideration, to conduct a review/investigation under the *EBR*.
- A **denied** application is an application for which a prescribed ministry has decided, after preliminary consideration, not to conduct a review/investigation under the *EBR*.
- A **returned** application is an application that has been returned by a ministry with the consent of the ECO, either because the applicants raised matters outside the ministry's jurisdiction or the application did not comply with an *EBR* requirement.
- A **cancelled** application is an application that is no longer relevant because the issue sought to be reviewed/investigated no longer exists.

The original applications were examined to determine the nature of the concerns raised – as well as the law, regulation or instrument alleged to have been contravened – by applicants. The ECO also reviewed the ministries' responses to applicants to determine: the number of applications received, denied, undertaken, returned, and cancelled; the number of applications for which the ministry was compliant with *EBR* timelines; and ministries' primary reasons for denying applications. The ECO surveyed its previous reviews of applications, as published in the supplements to the ECO's annual reports to evaluate: the number of applications for which the ECO agreed with the ministry's decision; the chief concerns the ECO had with the handling of applications; and the degree with which undertaken applications were followed by some government action, including site visits.

5.0 Number of Applications Received By Each Ministry

During the study period, 199 applications for review and 113 applications for investigation were received by prescribed ministries (see Table 1).

Table 1: Number and Percentage of Applications for Review and Investigation Received by Each Prescribed Ministry Between April 1, 2000 and March 31, 2010.

	Applications for Review	Applications for Investigation	All Applications
Ministry	Number (and Percentage)	Number (and Percentage)	Number (and Percentage)
MOE	107 (53.8%)	90 (79.6%)	197 (63.1%)
MNR	52 (26.1%)	22 (19.5%)	74 (23.7%)
MMAH	19 (9.5%)	0 (0%)	19 (6.1%)
MNDM	11 (5.5%)	0 (0%)	11 (3.5%)
ENG	7 (3.5%)	0 (0%)	7 (2.2%)
OMAFRA	2 (1.0%)	n/a	2 (0.6%)
MCS	1 (0.5%)	n/a	1 (0.3%)
TSSA	n/a	1 (0.9%)	1 (0.3%)
MOHLTC	0 (0%)	n/a	0 (0%)
MTO	0 (0%)	n/a	0 (0%)
All Ministries	**199 (100%)**	**113 (100%)**	**312 (100%)**

Not surprisingly, MOE, which has primary responsibility for protecting clean and safe air, land and water, received 54 per cent of the applications for review, followed by MNR with 26 per cent, and MMAH with 10 per cent. MOE also received the vast majority (80 per cent) of the applications for investigation, followed by MNR with 20 per cent.

6.0 Concerns Raised and Legislation Cited by Applicants

6.1 Concerns Raised in Applications for Review

Over the ten-year survey period, applicants submitted applications asking the government to review existing legislation, regulations, policies and instruments – or the need for a new law, regulation or policy – to address a wide range of environmental issues. Although categorizing applications by topic is subjective – and involves double-counting (see note below Table 2) – this analysis helps illustrate the breadth of issues raised in, and the concerns that are most often the subject of, applications for review. The most prevalent concern raised in applications for review was water quality, followed by land use planning, fish and wildlife management, and waste management (see Table 2).

Table 2: The Most Prevalent Concerns Raised in Applications for Review Received by Prescribed Ministries Between April 1, 2000 and March 31, 2010.

Nature of the Application's Concerns	Number (and Percentage) of Applications[1]
Water quality	47 (23.6%)
Land use planning	35 (17.6%)
Fish and wildlife management	33 (16.6%)
Waste management	29 (14.6%)
Environmental assessments	22 (11.1%)
Water management	22 (11.1%)
Air quality	20 (10.1%)
Forestry	20 (10.1%)
Mining	20 (10.1%)
Sewage/septage treatment	18 (9.0%)
Hazardous materials	16 (8.0%)
Aggregates	10 (5.0%)
Noise/vibration	10 (5.0%)
Transportation	5 (2.5%)
Pesticides	5 (2.5%)
Odour	3 (1.5%)
Aquaculture	3 (1.5%)
Wind turbines	2 (1.0%)

[1] Note: Because an application can raise more than one concern, the number of concerns raised exceeds the number of applications received.

6.2 Legislation Cited in Applications for Investigation

Over the ten-year study period, by far the most commonly cited act (66 per cent of applications for investigation) was the *Environmental Protection Act* (*EPA*) (see Table 3). In particular, applicants most frequently cited section 14 of the *EPA*, which prohibits the discharge of a contaminant into the natural

environment that causes or is likely to cause an adverse effect, including: injury or damage to property or to plant or animal life; harm or material discomfort to any person; loss of enjoyment of normal use of property; and interference with the normal conduct of business. Other commonly cited acts included the *Ontario Water Resources Act* and the *Environmental Assessment Act*.

Table 3: Legislation Cited in Applications for Investigation Received by Prescribed Ministries Between April 1, 2000 and March 31, 2010.

Acts Cited	Number (and Percentage) of Applications
Environmental Protection Act	73 (64.6%)
Ontario Water Resources Act	38 (33.6%)
Environmental Assessment Act	16 (14.2%)
Fisheries Act	11 (9.7%)
Lakes and Rivers Improvement Act	5 (4.4%)
Aggregate Resources Act	5 (4.4%)
Endangered Species Act[1] or *Endangered Species Act, 2007*	4 (3.5%)
Conservation Authorities Act	4 (3.5%)
Fish and Wildlife Conservation Act, 1997	4 (3.5%)
Gasoline Handling Act[2]	2 (1.8%)
Pesticides Act	2 (1.8%)
Clean Water Act, 2006	2 (1.8%)
Provincial Parks Act[3] or *Provincial Parks and Conservation Reserves Act, 2006*	1 (0.9%)
Public Lands Act	1 (0.9%)
Waste Management Act, 1992[4]	1 (0.9%)
Crown Forest Sustainability Act, 1994	1 (0.9%)

[1] Note: The *Endangered Species Act* was repealed in 2008.

[2] Note: The *Gasoline Handling Act* was repealed in 2001.

[3] Note: The *Provincial Parks Act* was repealed in 2007.

[4] Note: The *Waste Management Act, 1994* was repealed in 2010.

7.0 Ministries' Handling of Applications for Review

7.1 Ministries' Decisions on Applications for Review

Of the 199 applications for review received during the survey period, ministries decided to undertake only 33 (17 per cent) of them (see Table 4); 157 applications (79 per cent) were denied and 8 (4 per cent) were returned with the consent of the ECO, either because the applicants raised matters outside the ministry's jurisdiction or the application did not comply with an *EBR* requirement. For one application, MOE agreed to undertake a review of a Certificate of Approval (C of A) but then cancelled the review when the proponent asked that the C of A be revoked.

Comparing ministries, MOE denied 68 per cent and MNR denied 87 per cent of the applications for review they received (Table 4). MMAH, MNDM, OMAFRA and MCS denied 100 per cent of the applications for review they received, although these ministries – particularly OMAFRA and MCS – received far fewer applications.

Table 4: The Number and Percentage of Applications for Review Denied, Undertaken, Returned or Cancelled by Each Prescribed Ministry Between April 1, 2000 and March 31, 2010.

Ministry	Applications Undertaken Number (and Percentage)	Applications Denied Number (and Percentage)	Applications Returned Number (and Percentage)	Applications Cancelled Number (and Percentage)
MOE	28 (26.2%)	73 (68.2%)	5 (4.7%)	1 (0.9%)
MNR	4 (7.7%)	45 (86.5%)	3 (5.8%)	0 (0%)
MMAH	0 (0%)	19 (100%)	0 (0%)	0 (0%)
MNDM	0 (0%)	11 (100%)	0 (0%)	0 (0%)
ENG	1 (12.5%)	6 (85.7%)	0 (0%)	0 (0%)
OMAFRA	0 (0%)	2 (100%)	0 (0%)	0 (0%)
MCS	0 (0%)	1 (100%)	0 (0%)	0 (0%)
All Ministries	**33 (16.6%)**	**157 (78.9%)**	**8 (4.0%)**	**1 (0.5%)**

7.2 Ministries' Reasons for Denying Applications for Review

After a ministry has made a decision to undertake or deny an application for review, the minister must notify the applicants, the ECO and anyone with a "direct interest" in the matters raised in the application of the decision and the reasons for the decision. Ministries may deny applications for review based on considerations and exceptions identified in sections 63, 67 and 68 of the *EBR*. Ministries, however, often cite more than one of these provisions when denying applications.

Of the 157 applications for review denied during the study period, ministries denied more than half of them (64 per cent) on the grounds that the matters under review had been decided within the last five years in a manner consistent with the intent and purpose of the *EBR* (see Table 5).

Table 5: Reasons Cited by Ministries for Denying Applications for Review Received Between April 1, 2000 and March 31, 2010.

Reason for Denying the Application	Section of the *EBR*	Number (and Percentage) of Denied Applications
The decision sought to be reviewed was made in the previous five years	68(1)	101 (64.3%)
The public had an opportunity to participate in the decision's development	67(3)	61 (38.9%)
The public interest does not warrant a review	67(2)	51 (32.5%)
The ministry considers the application's issues outside the ministry's mandate	n/a	17 (10.85%)
The application requests a review of the need for a new exemption under the *Environmental Assessment Act*	63(2)(b)	15 (9.6%)
The decision sought to be reviewed is not prescribed under the *EBR*	63(2)(a)	8 (5.1%)

Other prevalent reasons for denying applications included: the public had an opportunity to participate in the decision's development (39 per cent of applications); and the public interest did not warrant a review (33 per cent), e.g., because there was no potential for harm to the environment if the review was not undertaken, or the matters sought to be reviewed were otherwise subject to periodic review. No minister has ever denied an application on the grounds that the ministry lacked the resources to undertake the review, although that provision is available under section 67(2)(f) of the *EBR*.

7.3 Ministries' Compliance with *EBR* Deadlines for Applications for Review

Under section 65 of the *EBR*, a ministry must notify applicants within 20 days of receiving an application for review from the ECO. Although during the study period ministries complied with this requirement for 91 per cent of applications (see Table 6), the rate of ministry compliance varied considerably; ministries that received the most applications (MOE and MNR) had rates of compliance of about 95 per cent, while some of the ministries that received few applications (e.g., MNDM, ENG and OMAFRA), and were perhaps less familiar with the application process, had rates of compliance of less than 50 per cent.

Table 6: Ministries' Compliance with Section 65 of the EBR (To Notify Applicants within 20 Days of Receiving an Application for Review) for Applications Received Between April 1, 2000 and March 31, 2010.

Ministry	Number of Applications Received	Number (and Percentage) of Applications for which the Ministry complied with Section 65 of the *EBR*
MOE	107	102 (95.3%)
MNR	52	49 (94.2%)
MMAH	19	19 (100%)
MNDM	11	5 (45.5%)
ENG	7	3 (42.9%)
MCS	1	1 (100%)
OMAFRA	2	1 (50.0%)
All Ministries	**199**	**180 (90.5%)**

Under section 70 of the *EBR*, ministries have 60 days to preliminarily consider the application and notify the applicants of their decision to undertake or deny an application for review. The rate of compliance with this requirement during the study period was quite low (see Table 7). Even MOE and MNR, which collectively received more than 80 per cent of the applications submitted, only complied with this requirement for about one-third and one-half respectively of the applications for review they received.

If a ministry decides to undertake a requested review, the *EBR* requires the ministry to send a decision notice within 30 days of completing the review. However, ministries are not required to inform the applicants or the ECO of the date when the review is actually completed. As a result, it is impossible for the ECO to confirm a ministry's compliance with the requirement to give notice of the decision within 30 days.

Table 7: Ministries' Compliance with Section 70 of the *EBR* (To Notify Applicants within 60 Days of Receiving an Application for Review whether the Review will be Undertaken or Denied) for Applications Received Between April 1, 2000 and March 31, 2010.

Ministry	Number of Applications Received	Number (and Percentage) of Applications for which the Ministry complied with Section 70 of the *EBR*
MOE	107	34 (31.8%)
MNR	52	29 (55.8%)
MMAH	19	12 (63.2%)
MNDM	11	1 (9.1%)
ENG	7	4 (57.1%)
OMAFRA	2	1 (50.0%)
MCS	1	1 (100%)
All Ministries	**199**	**82 (41.2%)**

8.0 Ministries' Handling of Applications for Investigation

8.1 Ministries' Decisions on Applications for Investigation

Of the 113 applications for investigation received during the survey period, ministries decided to undertake just 27 (24 per cent) of them (see Table 8). 84 applications (74 per cent) were denied and 2 applications were returned because the alleged contraventions were outside the ministry's jurisdiction.

Table 8: The Number and Percentage of Applications for Investigations Denied and Undertaken by Each Prescribed Ministry Between April 1, 2000 and March 31, 2010.

	Applications Undertaken	Applications Denied	Applications Returned
Ministry	Number (and Percentage)	Number (and Percentage)	Number (and Percentage)
MOE	26 (28.9%)	64 (71.1%)	0 (0%)
MNR	1 (4.5%)	19 (86.4%)	2 (9.0%)
TSSA	0 (0%)	1 (100%)	0 (0%)
All Ministries	**27 (23.9%)**	**84 (74.3%)**	**2 (1.8%)**

8.2 Ministries' Reasons for Denying Applications for Investigation

Under section 77 of the *EBR*, ministries can deny applications for investigation for a variety of reasons. In their decision letters to applicants, however, ministries often cite more than one reason for denying an application. During the study period, nearly half (45 per cent) of the 84 denied applications for investigation were turned down because the ministry decided that undertaking an *EBR* investigation would duplicate an ongoing or completed investigation (see Table 9). And for almost 43 per cent of the denied applications, ministries denied the application because the alleged contravenors had been brought into, or were already in, compliance.

Table 9: Reasons Cited by Ministries for Denying Applications for Investigation Received Between April 1, 2000 and March 31, 2010.

Reason for Denying the Application	Section of the *EBR* Cited	Number (and Percentage) of Denied Applications
An *EBR* investigation would duplicate an ongoing or completed investigation	77(3)	38 (45.2%)
The alleged contravenor has been brought into, or was already in, compliance	n/a	36 (42.9%)
Other reasons, e.g., the ministry has no jurisdiction or the limitation period for prosecuting the offence has expired	n/a	33 (39.3%)
The alleged contravention is not serious enough to warrant an investigation	77(2)(b)	18 (21.4%)
The alleged contravention is not likely to cause harm to the environment	77(2)(c)	16 (19.0%)

8.3 Ministries' Compliance with *EBR* Deadlines for Applications for Investigation

Under section 76 of the *EBR*, ministries are required to notify applicants within 20 days of receiving an application for investigation from the ECO. As shown in Table 10, ministries generally complied with this notification requirement during the study period. This high rate of compliance is perhaps not surprising given that two ministries (MOE and MNR) received practically all of the applications for investigation and are therefore very familiar with the process.

Table 10: Ministries' Compliance with Section 76 of the *EBR* (To Notify Applicants within 20 Days of Receiving an Application for Investigation) for Applications Received Between April 1, 2000 and March 31, 2010.

Ministry	Number of Applications Received	Number (and Percentage) of Applications for which the Ministry Complied with Section 76 of the *EBR*
MOE	90	76 (84.4%)
MNR	22	21 (95.4%)
TSSA	1	1 (100%)
All Ministries	**113**	**98 (86.7%)**

Upon receiving an application, the ministry then decides whether an investigation shall be undertaken. Under section 78 of the *EBR*, if a ministry decides not to undertake an investigation, the minister must notify the applicants, the alleged contravenor(s) and the ECO of this decision and the reasons for the decision within 60 days of receiving the application. The exception to this notification requirement is if an investigation in relation to the alleged contravention is ongoing apart from the application. Of the 84 applications for investigation denied by ministries during the study period, 46 were denied for reasons other than due to an ongoing investigation, and therefore warranted a notification within 60 days of the ministry receiving the application. However, for more than half of these 46 applications, the ministry failed to meet the notification deadline specified in section 78 of the *EBR* (see Table 11).

Table 11: Ministries' Compliance with Section 78 of the *EBR* (To Notify Applicants within 60 Days of Receiving an Application for Investigation of a Ministry's Decision to Deny an Investigation) for Applications Received Between April 1, 2000 and March 31, 2010.

Ministry	Number of Denied Applications	Number of Applications Denied for Reasons other than Due to an Ongoing Investigation	Number (and Percentage) of Applications Denied (for Reasons other than Due to an Ongoing Investigation) that Complied with Section 78 of the *EBR*
MOE	64	30	10 (33.3%)
MNR	19	16	8 (50.0%)
TSSA	1	0	0 (0%)
All Ministries	**84**	**46**	**18 (39.1%)**

If a ministry decides to undertake an investigation, section 79 of the *EBR* specifies that the ministry has 120 days from the date that the ministry received the application to either complete the investigation or give the applicants a written estimate of the time required to complete it. During the study period, MNR complied with this notification requirement for the one investigation it undertook. MOE, however, met the 120-day notification deadline for only 15 (58 per cent) of its undertaken applications (see Table 12).

Table 12: Ministries' Compliance with Section 79 of the *EBR* (i.e., within 120 Days of Receiving an Application for Investigation, Either Complete the Investigation or Inform the Applicants of the Time Required to Complete It) for Applications Received Between April 1, 2000 and March 31, 2010.

Ministry	Number of Undertaken Applications for Investigation	Number (and Percentage) of Undertaken Applications for which the Ministry Complied with Section 79 of the *EBR*
MOE	26	15 (57.7%)
MNR	1	1 (100%)
All Ministries	**27**	**16 (59.3%)**

9.0 The ECO's Review of How Ministries Handled Applications

In the supplements to the ECO's annual reports, the ECO reports on ministries' handling of the applications reviewed in each reporting year. Here, we statistically summarize the ECO's observations on ministries' handling of applications during the ten-year survey period.

9.1 The ECO's Assessment of Ministries' Decisions to Deny Applications for Review

Of the 29 applications for review that were received, undertaken and completed during the survey period, the ECO agreed with all of the decisions to undertake an application. Of the 157 applications for review that were received and denied by ministries during the survey period, the ECO disagreed with 56 (36 per cent) of the ministries' decisions (see Table 13). The ECO unequivocally agreed with 75 (48 per cent) of ministries' decisions to deny applications, leaving 26 applications for which the ECO's agreement was partial, tentative or equivocal.

Table 13: The ECO's Agreement with Ministry Decisions to Deny Applications for Review Received and Denied Between April 1, 2000 and March 31, 2010.

Ministry	Number of Denied Applications for Review	Number and Percentage of Applications for which the ECO Agreed with the Decision	Number (and Percentage) of Applications for which the ECO Partially or Equivocally Agreed with the Decision	Number (and Percentage) of Applications for which the ECO Disagreed with the Decision
MOE	73	41 (56.1%)	14 (19.2%)	18 (24.7%)
MNR	45	16 (35.6%)	3 (6.7%)	26 (57.8%)
MMAH	19	10 (52.6%)	4 (21.1%)	5 (26.3%)
MNDM	11	4 (36.4%)	2 (18.2%)	5 (45.5%)
ENG	6	2 (33.3%)	3 (50.0%)	1 (16.6%)
OMAFRA	2	1 (50.0%)	0 (0%)	1 (50.0%)
MCS	1	1 (100%)	0 (0%)	0 (0%)
All Ministries	**157**	**75 (47.7%)**	**26 (16.6%)**	**56 (35.7%)**

9.2 The ECO's Assessment of Ministries' Decisions to Deny Applications for Investigation

Of the 84 applications for investigation that were received and denied by ministries during the survey period, the ECO disagreed with only 5 (6 per cent) of the ministries' decisions (see Table 14). The ECO unequivocally agreed with 70 (83 per cent) of ministries' decisions to deny applications, leaving 9 applications for which the ECO's agreement was partial, tentative or equivocal.

Table 14: The ECO's Agreement with Ministry Decisions to Deny Applications for Investigation Received and Denied Between April 1, 2000 and March 31, 2010.

Ministry	Number of Denied Applications for Investigation	Number (and Percentage) of Applications for which the ECO Agreed with the Ministries' Decision	Number (and Percentage) of Applications for which the ECO Partially or Equivocally Agreed with the Ministries' Decision	Number (and Percentage) of Applications for which the ECO Disagreed with the Ministries' Decision
MOE	64	53 (82.8%)	8 (12.5%)	3 (4.7%)
MNR	19	16 (84.2%)	1 (5.3%)	2 (10.5%)
TSSA	1	1 (100%)	0 (0%)	0 (0%)
All Ministries	**84**	**70 (83.3%)**	**9 (10.7%)**	**5 (6.0%)**

9.3 The ECO's Concerns with Ministries' Decisions

As part of our review of ministries' disposition of applications, the ECO reviews ministries' letters to applicants explaining the reasons for denying an application or describing the outcome of an undertaken review or investigation. Over the ten-year survey period, the ECO identified several recurring issues with ministries' responses (see Table 15).

Table 15: Concerns Raised by the ECO Regarding Ministries' Handling of Applications Received and Undertaken/Denied Between April 1, 2000 and March 31, 2010.

ECO Concern	Number (and Percentage) of Undertaken or Denied Applications		
	Applications for Review	Applications for Investigation	All Applications
Ministry failed to comply with *EBR* notification requirements	57 (30.6%)	51 (45.9%)	108 (36.4%)
Ministry failed to respond to all issues raised	59 (31.7%)	29 (26.1%)	88 (29.6%)
Insufficient detail in the ministry's decision letter	39 (20.9%)	39 (35.1%)	78 (26.3%)
Other concerns (e.g., independence, inconsistencies, inappropriate rationales)	35 (18.8%)	30 (27.0%)	65 (21.9%)
Ministry had an unreasonable expectation of level of evidence provided	1 (0.5%)	6 (5.4%)	7 (2.4%)
No contact information provided by ministry	1 (0.5%)	3 (2.7%)	4 (1.3%)

Of the 186 applications for review and 111 applications for investigation received and undertaken/denied during the survey period, for 108 (36 per cent) of them the ECO raised concerns with the ministries' compliance with the *EBR*'s notification requirements, including: adhering to timelines; acknowledging that the application had been received; and advising applicants of the extension of completion dates. Other common ECO concerns related to the content of ministries' letters to applicants; for example, ministries often failed to respond to all the issues raised (30 per cent of applications) or to include sufficient detail in their response (26 per cent of applications). For seven applications, the ECO concluded that ministries were unreasonable in their expectations of the level of proof to be provided by the applicants.

10.0 The Utility of *EBR* Applications in Effecting Change

The purposes of the *EBR* are to: protect, conserve, and restore the integrity of the environment; provide sustainability of the environment; and protect the right to a healthful environment. To fulfill these purposes, *EBR* applications provide Ontarians with a means to participate in – and hold the government accountable for – environmentally significant decision making by the Government of Ontario. Although it can be difficult to demonstrate direct cause and effect relationships, it appears that *EBR* applications have played a role in prompting government action to improve environmental protection. Subsequent government actions have included new legislation, new and amended regulations, amendments to approvals, and Provincial Officer's Orders.

While these actions could be partly or primarily a result of a separate government review, investigation or other initiative, at least some of these changes can be attributed to applications. For example, applications have been responsible for prompting: MNR to strengthen the monitoring and enforcement of the rehabilitation of aggregate operations (see pages 177-185 of the Supplement to the ECO's

2006/2007 Annual Report); MOE to lay charges against an agricultural mill for exceeding noise limits (see pages 232-235 of the Supplement to the ECO's 2002/2003 Annual Report); and ENG to make regulatory amendments allowing Ontarians to use residential clotheslines despite restrictions in municipal and condominium by-laws (see pages 117-118 of the Supplement to the ECO's 2008/2009 Annual Report). Moreover, applications can plant the seeds for ministries to develop future legislation and policies that agree with, and address, the applicants' concerns.

10.1 Ministry Action on Issues Raised in Applications for Review

Ministries had completed reviews for 29 of the 33 applications for review received and undertaken during the study period; the other four undertaken applications were still being reviewed by the end of the study period. Based on information in ministries' decision letters, and the ECO's reviews of applications as published in the supplements to ECO annual reports, of these 29 completed reviews, at least 23 (79 per cent) were followed within the same reporting year by some government action on the issues raised (see Table 16). Even denied applications for review were sometimes followed by government actions on matters highlighted in applications; of the 157 applications for review denied during the study period, 50 (32 per cent) were followed by some government action, although many of these applications may have been denied because the government was already acting – or intending to act – on the issues raised. Government actions that occur outside the ECO's annual reporting period could be a result of a submitted application, but would not be captured in this analysis.

Table 16: Prevalence of Subsequent Ministry Action on Issues Raised in Applications for Review

Ministry	Number of Applications that were Undertaken and Completed	Number (and Percentage) of Completed Applications followed by Ministry Action on the Application's Issues	Number of Denied Applications	Number (and Percentage) of Denied Applications followed by Ministry Action on the Application's Issues
MOE	24	18 (75.0%)	73	27 (37.0%)
MNR	4	4 (100%)	45	14 (31.1%)
ENG	1	1 (100%)	6	3 (50.0%)
MMAH	0	n/a	19	0 (0%)
MNDM	0	n/a	11	5 (45.5%)
OMAFRA	0	n/a	2	1 (50.0%)
MCS	0	n/a	1	0 (0%)
All Ministries	**29**	**23 (79.3%)**	**157**	**50 (31.8%)**

10.2 Ministry Site Visits Relating to Issues Raised in Applications for Investigation

In response to applications for investigation, ministries sometimes conduct site visits to inspect the premises and the alleged contravenor's compliance with provincial laws, regulations and approvals. As

discussed earlier, the number of applications for investigation for which a ministry actually visited the site of alleged contravention(s) can provide a rough indicator of how serious ministries are considering and following-up on alleged contraventions raised in applications.

During the study period, of the 25 undertaken applications for investigation for which a site visit would have been applicable, ministries conducted site visits for at least 19 (76 per cent) of them. Moreover, even denied applications for investigation have resulted in site visits; of the 84 applications for investigation that were denied, at least 35 (42 per cent) involved a ministry site visit. Although site visits for 24 of these applications may have been conducted as part of a previous or ongoing ministry investigation, at least 11 of them were not, and were perhaps initiated as a result of the applications.

10.3 Ministry Action on Issues Raised in Applications for Investigation

Based on information in ministries' decision letters and the ECO's understanding of subsequent ministry actions, of the 27 undertaken applications for investigation, at least 20 (75 per cent) were followed by some ministry action on the issues raised (see Table 17). Ministry actions generally included amendments to Certificates of Approval, the laying of charges, or issuance of Provincial Officer's Orders. Even denied applications for investigation were sometimes followed by ministry action on matters highlighted in applications; of the 84 applications for investigation denied during the study period, 29 (35 per cent) were followed by some government action, although many of these applications may have been denied because the government was already acting – or intending to act – on the issues raised. Indeed, for both undertaken and denied applications, subsequent government actions could also have been a result of a separate ministry investigation already underway.

Table 17: Prevalence of Subsequent Ministry Action on Issues Raised in Applications for Investigation.

Ministry	Number of Applications for Investigation that were Undertaken	Number (and Percentage) of Undertaken Applications that were followed by Ministry Action on the Application's Issues	Number of Denied Applications for Investigation	Number (and Percentage) of Denied Applications that were followed by Ministry Action on the Application's Issues
MOE	26	19 (73.1%)	64	27 (42.2%)
MNR	1	1 (100%)	19	2 (10.5%)
TSSA	0	n/a	1	0 (0%)
Total	**27**	**20 (74.1%)**	**84**	**29 (34.5%)**

11.0 Conclusions

Over the years, Ontarians have submitted *EBR* applications on a wide variety of topics. Most applications for review, however, concerned water quality, land use planning, fish and wildlife management, and most applications for investigation cite contraventions of the *EPA*, *OWRA* and *EAA*. The vast majority of received applications were forwarded to MOE and MNR. While these two ministries were diligent at notifying applicants that their application has been received, they resemble other prescribed ministries in their frequent failure to meet *EBR* timelines in informing applicants whether an application is undertaken or denied, and the outcome of an undertaken review or investigation. To improve compliance with the *EBR*, ministries may need to re-evaluate their application handling processes.

During the survey period, applications for review and investigation were often turned down by ministries. However, from the ECO's perspective, ministries' rationales for turning down applications – particularly applications for investigation – were often valid. Moreover, applications – both undertaken and denied – were often followed by ministry action on concerns raised in applications. For example, when ministries undertook applications for review during the survey period, they followed up with some kind of action within the same reporting year about 80 per cent of the time. During the ten-year survey period, examples of ministry actions that can be linked at least partly to *EBR* applications have included regulatory and policy changes, compliance actions, and site visits. It is therefore reasonable to conclude that applications for review and investigation made under the *EBR* are useful tools in improving environmental protection and enhancing public participation in government decision making in Ontario. Even applications that are turned down with cause provide some assurance that the applicants' concerns were actually considered, and ensure a transparent and accountable public policy system.